



**U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED 9-5-78

RE: ORCHARD DALE FRUIT FARMS, INC.  
78-TLC-142

THIS IS A DECISION INVOLVING THE APPLICATION OF ORCHARD DALE FRUIT FARMS, INC., FOR TEMPORARY LABOR CERTIFICATION OF 18 ALIEN AGRICULTURAL WORKERS FILED PURSUANT TO THE REQUIREMENTS OF THE IMMIGRATION AND NATIONALITY ACT (ACT) AND IMPLEMENTING REGULATIONS ISSUED BY THE IMMIGRATION AND NATIONALITY SERVICE (INS) AND THE SECRETARY OF LABOR (SECRETARY). 8 U.S.C. §1101 ET SEQ., 8 C.F.R. §214.2(H)(3)I, 20 C.F.R. §655 ET SEQ.

THIS DECISION IS BASED ON THE EMPLOYER'S REQUEST, PURSUANT TO 20 C.F.R. §655.206(C), FOR AN EXPEDITED ADMINISTRATIVE-JUDICIAL REVIEW OF THE DENIAL OF LABOR CERTIFICATION BY REGIONAL ADMINISTRATOR, U.S. DEPARTMENT OF LABOR, EMPLOYMENT

AND TRAINING ADMINISTRATION, NEW YORK, NEW YORK, (RA) AND IS ISSUED IN ACCORDANCE WITH PROCEDURES UNDER 20 C.F.R. §655.212.

THE ACT AND THE INS REGULATION REQUIRE, IN SUPPORT OF A PETITION FOR ADMISSION OF ALIENS INTO THE UNITED STATES TO PERFORM TEMPORARY LABOR, CERTIFICATION FROM THE SECRETARY THAT QUALIFIED PERSONS IN THE UNITED STATES ARE NOT AVAILABLE AND THAT THE EMPLOYMENT OF THE ALIENS WILL NOT ADVERSELY AFFECT THE WAGES AND WORKING CONDITIONS OF WORKERS IN THE UNITED STATES SIMILARLY EMPLOYED.

THE EMPLOYER SEEKS CERTIFICATION OF THE 18 ALIENS TO HARVEST APPLES BY HAND IN WATERPORT, NEW YORK FROM SEPTEMBER 18 TO NOVEMBER 15, 1978, OR THE END OF THE SEASON, BECAUSE EFFORTS TO RECRUIT HAVE NOT ATTRACTED A SUFFICIENT NUMBER OF UNITED STATES (U.S.) WORKERS TO PICK AN INCREASE OVER LAST YEAR'S CROP.

ON AUGUST 22, 1978, THE RA DENIED THE APPLICATION FOR LABOR CERTIFICATION PURSUANT TO §655.206(a)(1) ON THE GROUND THAT ENOUGH

QUALIFIED U.S. WORKERS HAVE BEEN FOUND TO FILL ALL THE EMPLOYER'S JOB OPPORTUNITIES.

THE APPEAL FILE WAS RECEIVED IN THIS OFFICE ON AUGUST 29, 1978. IT REVEALS THAT SAMUEL PIERCE, A CREK7 LEADER OF 18 WORKERS, WAS THE ONLY PERSON TO RESPOND TO RECRUITMENT EFFORTS. HOWEVER, THE EMPLOYER REFUSED TO HIRE HIM ON THE ADVICE OF A FLORIDA AGENCY NOT TO HIRE BECAUSE HIS "REFERENCES DIDN'T CHECK OUT." IN HIS TELEGRAM REQUESTING REVIEW, THE EMPLOYER FURNISHED ADDITIONAL INFORMATION WHICH, IN ACCORDANCE WITH §655.12 OF THE REGULATIONS, THE HEARING OFFICER CANNOT RECEIVE OR CONSIDER.

THE LAW REQUIRES DENIAL OF LABOR CERTIFICATION WHERE QUALIFIED U.S. WORKERS ARE AVAILABLE. THE RA'S FINDING THAT THERE ARE PROVIDES A LEGALLY SUFFICIENT BASIS FOR DENYING LABOR CERTIFICATION.

ACCORDINGLY, THE RA'S DENIAL OF TEMPORARY LABOR CERTIFICATION IS AFFIRMED.

THIS DECISION IS BEING TRANSMITTED TO ORCHARD DALE FRUIT FARMS, INC., REGIONAL ADMINISTRATOR, ADMINISTRATOR, U.S. EMPLOYMENT SERVICE, ASSOCIATE SOLICITOR FOR EMPLOYMENT AND TRAINING, AND DIRECTOR, INS.

AARON SILVERMAN  
Hearing Officer